Appendix A

DIVISION I
ARKANSAS COURT OF APPEALS

No. CACR 88-34

Richard Booth

Appellant

v.

State of Arkansas

Appellee

Opinion Delivered December 7, 1988

AN APPEAL FROM BENTON COUNTY
CIRCUIT COURT, FIRST DIVISION

HONORABLE WILLIAM H. ENFIELD,
CIRCUIT JUDGE

AFFIRMED

DONALD L. CORBIN, *Chief Judge*

This appeal comes to us from Benton County

Circuit Court, First Division. Appellant, Richard Booth, appeals from a judgment entered on July 22, 1987, wherein he was found guilty of leaving the scene of an accident involving death or personal injury, a violation of Arkansas Code Annotated §27-53-101 (Supp. 1987) and two counts of manslaughter, a violation of Arkansas Code Annotated §5-10-104 (1987) and the sentences and fines imposed therefor. We affirm.

A felony information was filed December 20, 1984, charging appellant with leaving the scene of an accident involving death or physical injury and another filed April 23, 1985, charging appellant with two counts of manslaughter for the deaths of Mark and Marcene Gilliland. Prior to trial, appellant moved to suppress all evidence obtained in violation of his fourth and fourteenth amendment rights against unreasonable searches and seizures. The court denied appellant's motion and the charges were tried to a jury which found appellant guilty on all counts and sentenced him to six years imprisonment and a $10,000 fine for leaving the scene of the accident and ten years imprisonment and $10,000 fine on each manslaughter conviction. From the judgment, comes this appeal.

Appellant raises the following two points for reversal: 1) The trial court erred in denying defendant's motion to suppress and objections to introduction of evidence taken from defendant's vehicle without a valid search warrant, without reasonable cause and absent

exigent circumstances; 2) the trial court erred in denying defendant's motions for a directed verdict because the state failed to introduce any substantial evidence from which the jury could find the requisite intent or identify the defendant as the perpetrator of either charge beyond a reasonable doubt.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Vandercamp v. State*, 19 Ark. App. 361, 721 S.W.2d 680 (1986). When there is a challenge to the sufficiency of the evidence, the court must review that point prior to considering any alleged trial error. *Harris v. State*, 284 Ark. 247, 681 S.W.2d 334 (1984). In determining the sufficiency of the evidence, we consider all evidence, including any which may have been inadmissible, in the light most favorable to appellee. Id. We will affirm the conviction on appeal if there is any substantial evidence to support the verdict. *McCoy v. State*, 293 Ark. 49, 732 S.W.2d 156 (1987). Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Phillips v. State*, 17 Ark. App. 86, 703 S.W.2d 471 (1986).

Appellant was convicted of violating the manslaughter statute which provides that a person commits manslaughter if he recklessly causes the death of another. "Recklessly" is defined in Arkansas Code Annotated §5-2-202(3) (1987) as follows:

> (3) "Recklessly." A person acts recklessly with respect to attendant circumstances or a result of his conduct when he consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor's situation[.]

Appellant contends that there was insufficient evidence to identify him as the perpetrator of the crimes charged or to establish that his conduct was "reckless" as required by the manslaughter statute. Viewed in the light most favorable to appellee, the evidence reveals that at approximately 1:15 a.m. on December 9, 1984, Mark and Marcene Gilliland were killed in a hit and run automobile accident on Highway 43 near Siloam Springs, Arkansas. Physical evidence at the scene reveals that the Gilliland vehicle was traveling south on the highway and the fleeing vehicle was a reddish-orange tractor-trailer rig traveling north.

A police investigation ensued and based upon physical and verbal evidence gathered, appellant was implicated as the driver of the vehicle that left the scene of the accident in which the Gillilands were killed. A

compilation of the evidence generally reveals that Michael Wacker hired appellant to deliver hay to his farm near Gentry, Arkansas. Appellant, a Kansas resident, delivered the hay on December 8, 1984, and then went to Mick's Place, a bar owned by Michael and Dee Wacker in Sandusky, Oklahoma. Mr. Wacker testified that he arrived at the bar at approximately 3:00 p.m. and appellant was already there. Mr. Wacker stated that appellant was drinking at that time and was very argumentative and disruptive toward the other customers.

Dee Wacker testified that she arrived at the bar around 6:00 p.m. and observed that appellant was intoxicated, belligerent and talking vulgar. The Wackers refused to serve appellant any alcoholic beverages after 6:00 p.m. or 7:00 p.m. because of his intoxicated condition. Appellant became angered by this and attempted to take drinks from other customers. At approximately this time, it was determined that appellant's tractor-trailer was parked partially on the highway. Appellant was too intoxicated to get into the cab of the truck and another patron of the bar moved the vehicle off the road for him. At that time, Mr. Wacker took appellant's truck keys so he could not drive.

Appellant left Mick's Place with a woman to go to another bar to drink at 8:30 p.m. or 9:00 p.m. He returned an hour or an hour and one-half later in a more intoxicated condition and remained at Mick's Place until

it closed. Although the Wackers tried to persuade appellant to stay overnight at their apartment, he insisted on driving back to his home in Kansas. The evidence is inconclusive as to the exact time of appellant's departure. Dee Wacker testified that appellant drove away from the bar between 12:50 a.m. and 1:00 a.m. on December 9, 1984, while Michael Wacker estimated appellant's departure time as between 1:00 a.m. and 1:10 a.m. There was evidence presented that the clock in the bar was set back ten minutes.

Pursuant to a conversation Mr. Wacker had with appellant, Wacker testified that appellant was planning on driving home on Highway 43 to avoid going through Gentry, Arkansas, because he previously received a DWI citation in that town. Appellant left on Highway 12 going toward the Highway 43 junction. When appellant left Mick's Place the brakes on his truck did not have enough air pressure and the vehicle skidded ten or twenty feet. Testimony indicated that appellant's vehicle made loud, screeching noises as he drove away.

Don Blagg, who lives at the intersection of Highways 43 and 12 on the Oklahoma-Arkansas border, testified that he was awakened at 1:00 a.m. on December 9, 1984, by a rumbling noise which sounded like a truck running off the road. Later Mr. Blagg saw skid marks on Highway 43 consistent with the noise he heard.

The persons with whom the Gillilands spent the

evening of December 8, 1984, also testified. Collectively their testimony reveals that on this evening the victims were guests in the home of Carl Bonner. The Gillilands, along with the other guests, left the Bonner residence at approximately 1:00 a.m. on December 9, 1984, and arrived at Highway 43 somewhere around 1:00 a.m. to 1:05 a.m.

The accident was discovered by Mike Burrow and Doug McAfee on December 9, 1984, between 12:30 a.m. and 1:15 a.m. as they were traveling north on Highway 43. Mr. Burrow testified that there were fresh dual tire marks from a large truck on the highway and the side of the victims' tan vehicle had red paint on it. When these young men were interviewed at the scene neither told authorities that they met a vehicle on the highway before encountering the accident scene. However, approximately eight days after the accident, Mr. McAfee telephoned the police to inform them that he remembered being run off the road on that evening by a long-nose tractor with a flatbed trailer. Mr. McAfee did not testify at trial; however, Mr. Burrow's testimony reveals that they did not meet any vehicles on the highway prior to discovering the Gilliland vehicle and were not run off the road by a semi-truck.

The evidence reveals that the victims' vehicle is a 1981 tan colored Ford Escort and the appellant's vehicle is a 1976 Peterbilt cab-over brown and white tractor with a reddish-orange flatbed trailer. Physical evidence was

presented that indicated that appellant's tractor-trailer was the vehicle which left the scene of the accident in which the Gillilands were killed. From all the evidence gathered, the estimated time of the accident was 1:15 a.m. on December 9, 1984.

Numerous police officers testified about the condition of both vehicles. Their testimony generally reveals that the skid marks at the scene were made by a large truck traveling north. Comparable dual skid marks were found from Mick's Place to the Blagg residence, as well as in every curve leading to the scene of the accident. The victims' car was knocked approximately thirty-five feet off the highway sustaining primary damage to the driver's side. Red paint transfers were found on the hood, left front quarter panel, and door of the victim's tan car. Based upon the skid marks and location of damage to the victims' car, the authorities began looking for a reddish-orange tractor-trailer rig with damage to the driver's side.

A search of appellant's vehicle revealed evidence of recent damage consistent with their conclusions. There was a six to eight inch tan paint transfer above the bumper of the tractor and the same color paint transfer along the left side of the trailer bed approximately six feet in length. The front left axle of the rear tires was pushed back approximately one foot and the tires on the left side of the front axle were flat. Also, particles of glass and tan paint chips were found on the top and

bottom of the trailer. The trailer bed was dirty except in the areas where the tan paint was transferred. These areas revealed a clean surface and the part of the trailer scraped down to the base revealed a shiny and rust-free surface indicating a recent scrape. As further proof that the two vehicles collided, evidence was presented that the distance from the ground to where the paint transfers began on appellant's trailer was thirty-four and one-half inches and the distance from the ground to the bottom part of the red paint transfers on the victim's car was also thirty-four and one-half inches.

Steve Cox, the Chief Criminalist of the Arkansas State Crime Laboratory testified that he performed tests comparing paint and glass samples removed from both the Gilliland vehicle and appellant's vehicle. Based upon scientific testing methods, Mr. Cox testified that the tan paint found on appellant's trailer came from a 1981 Ford product and could have come from the appellant's 1981 Ford Escort. Also, he concluded that the red paint found on the victims' car could have come from appellant's trailer. Mr. Cox also testified that five of the nine analyzed glass samples taken from appellant's trailer matched the blass samples taken from the victims' car. Mr. Cox concluded that the odds that the two vehicles did not come into contact with each other are "extremely remote."

Appellant argues that the above facts are insufficient to support his conviction. We disagree. Guilt

need not always be proven by direct evidence. Circumstantial evidence can present a question to be resolved by the trier of fact and be the basis to support a conviction. *Yandell v. State*, 262 Ark. 195, 555 S.W.2d 561 (1977). We have often said that the fact that evidence is circumstantial does not render it insubstantial. See, e.g., *Ashley v. State*, 22 Ark. App. 73, 732 S.W.2d 872 (1987). The jury is allowed to draw any reasonable inference from circumstantial evidence to the same extent that it can from direct evidence. *Payne v. State*, 21 Ark. App. 243, 731 S.W.2d 235 (1987).

Viewing the above and all evidence of record in the light most favorable to appellee, we find substantial evidence from which the jury could have found appellant guilty of the crimes charged and that his conduct was reckless and exhibited a conscious disregard of a perceived risk. Therefore, we affirm as to appellant's second point for reversal.

Lastly, we address appellant's argument that the trial court erred in denying his motion to suppress and objections to introduction of evidence taken from appellant's vehicles without a valid search warrant, without reasonable cause and absent exigent circumstances.

At the pretrial suppression hearing and throughout the trial, appellant sought to suppress all photographs, paint and glass samples, test results and testimony from

the seizure and subsequent searches of appellant's vehicle obtained in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

The record reveals that Officer Edward Boring, a trooper for the Kansas Highway Patrol, received a call on December 9, 1984, from the Arkansas State Police stating that appellant was suspected of being involved in a hit and run accident near the Oklahoma-Arkansas border involving two fatalities. The Kansas authorities also received an independent lead which implicated appellant. The Kansas officer was told that the vehicle that left the scene was a flatbed red or burnt orange tractor-trailer with damage to its left side and the victims' car was a tan Ford Escort. Kansas officers spoke to appellant at his home on that day and obtained his permission to look at his vehicle. Appellant told the officers that his truck was parked at a local tavern. Upon looking at the vehicle, the officers determined that it was the vehicle that had been involved in the fatal accident. Photographs were taken of the vehicle parked at the tavern.

The officers returned to appellant's home and read him his *Miranda* warnings. During a brief period of questioning, appellant admitted delivering hay to Arkansas on the previous day but refused to tell the time he returned home. The vehicle was impounded after appellant's arrest and remained in the custody of the

Kansas authorities until December 21, 1984. The vehicle was examined and various paint and glass samples were removed on December 11, 1984, and on December 21, 1984.

It is well settled that an officer may conduct searches and make seizures without a warrant if consent is given to the search. Ark. R. Crim. P. 11.1. Additionally, any weapons or other things used or likely to be used as means of committing a criminal offense are permissible objects of seizure. Ark. R. Crim. P. 10.2.

Here, appellant gave the authorities consent to view his vehicle; however, even absent such consent, the appellant had no reasonable expectation of privacy to the outside of his tractor-trailer parked on a public street in front of a tavern. *See, e.g., Cardwell v. Lewis*, 417 U.S. 583 (1974). Upon viewing the vehicle, the police had probable cause to believe that appellant's vehicle was the instrument of the deaths and was the item to be seized and examined for evidence. While this issue has not arisen in this state, other jurisdictions have addressed the seizure of vehicles because of their potential evidentiary value as the "instrumentality of the crime."

In the recent case of *People v. Griffin*, ____ Cal.3d____, 761 P. 2d 103, 251 Cal. Rptr. 643 (1988) the Supreme Court of California upheld the warrantless search of the defendant's impounded truck on the ground of the "instrumentality " exception to the warrant

requirement, i.e., that the vehicle itself was an instrumentality of the crime or was itself evidence. In *Griffin*, the appellant's van had a bloody shoe print on the floorboard which appeared to match a bloody shoe print found at the scene of the murder. The court found that the bloodstains that had soaked into the floorboard of the truck were clearly an appropriated subject of scientific examination and within the limits of the instrumentality exception.

In the vehicular assault case of *People v. Zamora*, 695 P.2d 292 (Colo. 1985) the court upheld the warrantless search of an impounded automobile because it was legally seized as evidence itself based on the victim's description of the car and identity of the driver. The court held that when an object is lawfully seized and the police have a reasonable belief that the object is itself evidence of the commission of a crime, a subsequent examination of the object made proximate in time to the seizure, and undertaken for the purpose of determining its evidentiary value, is not an unlawful search.

In *People v. Teale*, 70 Cal.2d 497, 450 P.2d 564, 75 Cal. Rptr. 172 (1969) the court upheld the warrantless seizure of an automobile in which police had cause to believe that the victim was shot. The officers seized the car incident to lawful arrest and ten days later the car was examined by a criminologist who found the victim's blood splattered on the interior. In that case the court

found no violation of the fourth amendment because the automobile was itself evidence subject to seizure. The court analogized the situation to a case in which a person suspected of homicide is found in possession of a gun. It stated that it has never been held that a search warrant is necessary to enable the police to perform ballistic testing to determine if the gun was the one used in the killing. The *Teale* court, quoting *People v. Webb*, 66 Cal. 2d 107, 424 P. 2d 342, 56 Cal. Rptr. 902 (1967) also stated:

> The implication is that when the police lawfully seize a car which is itself **evidence** of a crime rather than merely a container of incriminating articles, they may postpone searching it until arrival at a time and place in which the examination can be performed in accordance with sound scientific procedures.

Teale, 66 Cal.2d at ____, 450 P.2d at 570-571, 75 Cal. Rptr. at 178-79.

This principle was again followed in *State v. Lewis*, 22 Ohio St. 2d 125, 258 N.E.2d 445, *cert. denied*, 400 U.S. 959 (1970), where it was held that since there was reasonable ground to believe that defendant's automobile was an instrumentality used in committing a murder, removal of paint samples for scientific examination was neither a search nor a

seizure. No search warrant was required to validate the examination even though the examination was conducted at a place and time remote from the seizure.

The propriety of a warrantless seizure and search where the vehicle is the evidence or instrumentality of a crime is implicit in several United States Supreme Court decisions as well. *See e.g., Cardwell v. Lewis*, 417 U.S. 583 (1974); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Cooper v. California*, 386 U.S. 58 (1967); *Carroll v. United States*, 267 U.S. 132 (1925).

In reviewing a trial judge's ruling on a motion to suppress, we make an independent determination based on the totality of the circumstances. We reverse only if the trial judge's ruling was clearly against the preponderance of the evidence. *Cook v. State*, 293 Ark. 103, 732 S.W.2d 462 (1987). Additionally, the trial judge has discretion in deciding evidentiary issues and his decision will not be reversed on appeal unless he has abused his discretion. *Hoback v. State*, 286 Ark. 153, 689 S.W.2d 569 (1985). Based upon our independent determination, the total circumstances reveal that the officers lawfully seized appellant's vehicle as a permissible object of seizure after viewing it with his consent. Upon inspection of the vehicle, the police had a reasonable belief that it was evidence of the

commission of a crime. Since the initial seizure was legal and since the reason for and nature of the custody of the vehicle was to use it as evidence, the subsequent warrantless searches were not unconstitutional. From the facts stated and the cases listed above, we find no error in the trial court's denial of the motion to suppress nor do we find that the trial court abused its discretion in allowing in evidence obtained from the search and seizure of appellant's vehicle. Therefore, the case must be affirmed.

Affirmed.

Cooper and Mayfield, JJ., agree.

A
Appendix B

IN THE CIRCUIT COURT
OF BENTON COUNTY, ARKANSAS

State of Arkansas Plaintiff

vs Nos. CR-86-191-1 and CR-86-192-1

Richard W. Booth Defendant

ORDER

On December 9, 1984, in the early morning hours the victims' vehicle was struck by another vehicle which was determined at the scene to be a semi-tractor-trailer, rust color, headed northbound on State Highway 43. Arkansas State Police officers obtained information that Defendant had been in the vicinity during the previous evening and had left a bar in an intoxicated condition at a time which would have placed him at the site of the accident at the time it occurred. The vehicle which Defendant was known to have been driving matched the description of the vehicle sought by the officers. The officers also had information that Defendant would be traveling Highway 43 North back to Kansas, that the tractor-trailer would be damaged on the left rear side, and would have tan paint on it transferred from the victims' vehicle. With this information Trooper Keith

Ferguson contacted Trooper Ed Boring of the Kansas Highway Patrol. Troopers Boring and Westgate went to Defendant's residence and asked him if he owned a tractor-trailer rig, the location of it, and if they could look at it. Defendant told them the location of the rig, and consented to their viewing it. They found it parked on a public street in front of the Landmark Tavern in Moran, Kansas. They saw the rig, rust colored, with tan paint transfers and damage to the left rear side. They seized the vehicle and caused it to be stored at a secure impoundment belonging to the State of Kansas.

The troopers then returned to Defendant's residence, advised him of his rights and asked him if he had been in Arkansas the night before. He confirmed that he had, but he refused to talk further when asked what time he returned to Kansas. No attempt was made to question him further.

Subsequently, while the rig remained in impoundment officers took photographs of it, removed glass from the truck bed, and removed paint scrapings from the side of the truck for chemical analysis.

Defendant contends that the viewing of the rig on a public street constituted a search. Even if it did, the law is clear that the viewing on public street does not constitute an unreasonable search proscribed by

Arkansas Criminal Rules. Defendant could have had no reasonable expectation of privacy in the vehicle under the circumstances. *Cardwell vs. Lewis*, 417 U.S. 583.

The vehicle was seized and impounded upon reasonable cause to believe it constituted evidence of a crime. Once seized and impounded the vehicle was examined and evidence taken. At that time Defendant was aware of the officers' interest in the vehicle and, as a consequence, the motivation to remove evidence from official custody was increased. This is the very reason for the automobile exception to the requirement for a search warrant.

Defendant contends that the search for evidence once the vehicle had been impounded was unreasonable because probable cause to search it existed for some time prior to the search, thus no exigent circumstances. In *Cardwell v. Lewis*, supra, the U.S. Supreme Court held that the right to search on probable cause and the reasonableness of seizing the vehicle under exigent circumstances are not foreclosed if a warrant was not obtained at the first practicable moment. "The exigency may arise at any time, and the fact that the police might have obtained a warrant earlier does not negate the possibility of a current situation's necessitating prompt police action." In this case, the exigency developed primarily from Defendant's actions in court to regain

custody of his vehicle.

Lastly, Defendant argues that the first search of the vehicle was the fruit of an admission by Defendant concerning the location of his vehicle before he was given the Miranda warning. That warning was unnecessary at the time because Defendant was not in custody and the officers were still investigating. Defendant was not accused at that time, hence the warning was not required.

The motions to suppress are accordingly overruled.

W. H. ENFIELD

Entered: 24 February, 1987

Appendix C

DIVISION I
ARKANSAS COURT OF APPEALS

No. CACR 88-34

Richard Booth

Appellant

v.

State of Arkansas

Appellee

Opinion Delivered January 11, 1989

AN APPEAL FROM BENTON COUNTY
CIRCUIT COURT, FIRST DIVISION

HONORABLE WILLIAM H. ENFIELD,
CIRCUIT JUDGE

SUBSTITUTED OPINION ON
DENIAL OF REHEARING

DONALD L. CORBIN, *Chief Judge*

This appeal comes to us from Benton County Circuit Court, First Division. Appellant, Richard Booth, appeals from a judgment entered on July 22, 1987, wherein he was found guilty of leaving the scene of an accident involving death or personal injury, a violation of Arkansas Code Annotated §27-53-101 (Supp. 1987) and two counts of manslaughter, a violation of Arkansas Code Annotated §5-10-104 (1987) and the sentences and fines imposed therefor. We affirm.

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Annotated §5-2-202(3) (1987) as follows:

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A police investigation ensued and based upon physical and verbal evidence gathered, appellant was implicated as the driver of the vehicle that left the scene

of the accident in which the Gillilands were killed. A compilation of the evidence generally reveals that Michael Wacker hired appellant to deliver hay to his farm near Gentry, Arkansas. Appellant, a Kansas resident, delivered the hay on December 8, 1984, and then went to Mick's Place, a bar owned by Michael and Dee Wacker in Sandusky, Oklahoma. Mr. Wacker testified that he arrived at the bar at approximately 3:00 p.m. and appellant was already there. Mr. Wacker stated that appellant was drinking at that time and was very argumentative and disruptive toward the other customers.

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Appellant argues that the above facts are

insufficient to support his conviction. We disagree. Guilt need not always be proven by direct evidence. Circumstantial evidence can present a question to be resolved by the trier of fact and be the basis to support a conviction. *Yandell v. State*, 262 Ark. 195, 555 S.W.2d 561 (1977). We have often said that the fact that evidence is circumstantial does not render it insubstantial. See, e.g., *Ashley v. State*, 22 Ark. App. 73, 732 S.W.2d 872 (1987). The jury is allowed to draw any reasonable inference from circumstantial evidence to the same extent that it can from direct evidence. *Payne v. State*, 21 Ark. App. 243, 731 S.W.2d 235 (1987).

Viewing the above and all evidence of record in the light most favorable to appellee, we find substantial evidence from which the jury could have found appellant guilty of the crimes charged and that his conduct was reckless and exhibited a conscious disregard of a perceived risk. Therefore, we affirm as to appellant's second point for reversal.

Lastly, we address appellant's argument that the trial court erred in denying his motion to suppress and objections to introduction of evidence taken from appellant's vehicles without a valid search warrant, without reasonable cause and absent exigent circumstances.

At the pretrial suppression hearing and throughout the trial, appellant sought to suppress all photographs,

paint and glass samples, test results and testimony from the seizure and subsequent searches of appellant's vehicle obtained in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

The record reveals that Officer Edward Boring, a trooper for the Kansas Highway Patrol, received a call on December 9, 1984, from the Arkansas State Police stating that appellant was suspected of being involved in a hit and run accident near the Oklahoma-Arkansas border involving two fatalities. The Kansas authorities also received an independent lead which implicated appellant. The Kansas officer was told that the vehicle that left the scene was a flatbed red or burnt orange tractor-trailer with damage to its left side and the victims' car was a tan Ford Escort. Kansas officers spoke to appellant at his home on that day and obtained his permission to look at his vehicle. Appellant told the officers that his truck was parked at a local tavern. Upon looking at the vehicle, the officers determined that it was the vehicle that had been involved in the fatal accident. Photographs were taken of the vehicle parked at the tavern.

The officers returned to appellant's home and read him his *Miranda* warnings. During a brief period of questioning, appellant admitted delivering hay to Arkansas on the previous day but refused to tell the time he returned home. The vehicle was impounded after

appellant's arrest and remained in the custody of the Kansas authorities until December 21, 1984. The vehicle was examined and various paint and glass samples were removed on December 11, 1984, and on December 21, 1984.

It is well settled that an officer may conduct searches and make seizures without a warrant if consent is given to the search. Ark. R. Crim. P. 11.1. Additionally, any weapons or other things used or likely to be used as means of committing a criminal offense are permissible objects of seizure. Ark. R. Crim. P. 10.2.

Here, appellant gave the authorities consent to view his vehicle; however, even absent such consent, the appellant had no reasonable expectation of privacy to the outside of his tractor-trailer parked on a public street in front of a tavern. *See, e.g., Cardwell v. Lewis*, 417 U.S. 583 (1974). Upon viewing the vehicle, the police had probable cause to believe that appellant's vehicle was the instrument of the deaths and was the item to be seized and examined for evidence. While this issue has not arisen in this state, other jurisdictions have addressed the seizure of vehicles because of their potential evidentiary value as the "instrumentality of the crime."

In the recent case of *People v. Griffin*, ____ Cal.3d____, 761 P. 2d 103, 251 Cal. Rptr. 643 (1988) the Supreme Court of California upheld the warrantless search of the defendant's impounded truck on the

ground of the "instrumentality " exception to the warrant requirement, i.e., that the vehicle itself was an instrumentality of the crime or was itself evidence. In *Griffin*, the appellant's van had a bloody shoe print on the floorboard which appeared to match a bloody shoe print found at the scene of the murder. The court found that the bloodstains that had soaked into the floorboard of the truck were clearly an appropriated subject of scientific examination and within the limits of the instrumentality exception.

In the vehicular assault case of *People v. Zamora*, 695 P.2d 292 (Colo. 1985) the court upheld the warrantless search of an impounded automobile because it was legally seized as evidence itself based on the victim's description of the car and identity of the driver. The court held that when an object is lawfully seized and the police have a reasonable belief that the object is itself evidence of the commission of a crime, a subsequent examination of the object made proximate in time to the seizure, and undertaken for the purpose of determining its evidentiary value, is not an unlawful search.

In *People v. Teale*, 70 Cal.2d 497, 450 P.2d 564, 75 Cal. Rptr. 172 (1969) the court upheld the warrantless seizure of an automobile in which police had cause to believe that the victim was shot. The officers seized the car incident to lawful arrest and ten days later the car was examined by a criminologist who found the victim's

blood splattered on the interior. In that case the court found no violation of the fourth amendment because the automobile was itself evidence subject to seizure. The court analogized the situation to a case in which a person suspected of homicide is found in possession of a gun. It stated that it has never been held that a search warrant is necessary to enable the police to perform ballistic testing to determine if the gun was the one used in the killing. The *Teale* court, quoting *People v. Webb*, 66 Cal. 2d 107, 424 P. 2d 342, 56 Cal. Rptr. 902 (1967) also stated:

> The implication is that when the police lawfully seize a car which is itself **evidence** of a crime rather than merely a container of incriminating articles, they may postpone searching it until arrival at a time and place in which the examination can be performed in accordance with sound scientific procedures.

Teale, 66 Cal.2d at ____, 450 P.2d at 570-571, 75 Cal. Rptr. at 178-79.

This principle was again followed in *State v. Lewis*, 22 Ohio St. 2d 125, 258 N.E.2d 445, *cert. denied*, 400 U.S. 959 (1970), where it was held that since there was reasonable ground to believe that defendant's automobile was an instrumentality used in committing a murder, removal of paint samples for

scientific examination was neither a search nor a seizure. No search warrant was required to validate the examination even though the examination was conducted at a place and time remote from the seizure.

The propriety of a warrantless seizure and search where the vehicle is the evidence or instrumentality of a crime is implicit in several United States Supreme Court decisions as well. *See e.g., Cardwell v. Lewis*, 417 U.S. 583 (1974); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Cooper v. California*, 386 U.S. 58 (1967); *Carroll v. United States*, 267 U.S. 132 (1925).

In reviewing a trial judge's ruling on a motion to suppress, we make an independent determination based on the totality of the circumstances. We reverse only if the trial judge's ruling was clearly against the preponderance of the evidence. *Cook v. State*, 293 Ark. 103, 732 S.W.2d 462 (1987). Additionally, the trial judge has discretion in deciding evidentiary issues and his decision will not be reversed on appeal unless he has abused his discretion. *Hoback v. State*, 286 Ark. 153, 689 S.W.2d 569 (1985). Based upon our independent determination, the total circumstances reveal that the officers lawfully seized appellant's vehicle as a permissible object of seizure after viewing it with his consent. Upon inspection of the vehicle, the police

had a reasonable belief that it was evidence of the commission of a crime. Since the initial seizure was legal and since the reason for and nature of the custody of the vehicle was to use it as evidence, the subsequent warrantless searches were not unconstitutional. From the facts stated and the cases listed above, we find no error in the trial court's denial of the motion to suppress nor do we find that the trial court abused its discretion in allowing in evidence obtained from the search and seizure of appellant's vehicle. Therefore, the case must be affirmed.

Affirmed.

Cooper and Mayfield, JJ., agree.